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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: JUL 16 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director then dismissed a motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the Form I-140 petition on August 27, 2010. The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a surgeon. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States.

The director denied the petition on January 12, 2011, finding that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. On February 10, 2011, the petitioner filed a timely motion to reconsider the decision. The director dismissed the motion on September 3, 2011, stating that the motion did not meet the requirements of a motion to reconsider. On October 3, 2011, the petitioner filed a timely appeal to the director's decision.

On appeal, the petitioner submits a brief and several supporting exhibits.

An appeal, a motion to reopen and a motion to reconsider are distinct from one another and serve different purposes; they are not simply interchangeable means by which a petitioner may contest an adverse decision. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In the decision dismissing the petitioner's motion, the director stated that the "motion neither . . . provides precedent decisions to consider, nor establishes that the decision was incorrect based upon the evidence of record at the time." The director therefore dismissed the motion, and advised the petitioner of his appeal rights. It is the petitioner's subsequent appeal that is now before the AAO.

The appeal under consideration by the AAO is not an appeal of the director's initial decision on the merits of the petition. The petitioner did not appeal that decision, but chose to file a motion instead. The director, in turn, dismissed that motion. On appeal, therefore, is not the denial of the petition but rather the dismissal of the motion. Before the AAO can give any consideration to the merits of the underlying petition, the petitioner must first establish that the director erred by dismissing the motion.

The appellate process does not provide the petitioner with an indefinite or open-ended period in which to dispute the denial of a petition. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(i) requires the petitioner to file the appeal within 30 days after service of the

decision. The time to file an appeal to the original decision elapsed in February 2011. The petitioner's October 2011 filing was only timely in relation to the director's second decision, issued in September 2011. Therefore, the AAO cannot consider the merits of the underlying petition until and unless the petitioner establishes that the director erred by dismissing the motion to reconsider. The petitioner cannot establish that error simply by reasserting the merits of the underlying petition.

In a short introductory statement on appeal, counsel states: "USCIS ignored the great weight of evidence that supported the immigrant petition I-140, and committed clear error in denying the petition." Counsel does not comment on the dismissal of the motion. A subsequent brief is largely identical to the brief previously submitted on motion, apart from newly inserted passages and additional language describing the petitioner's research and citation of his published work.

Counsel's first brief, on motion, included no specific discussion of the director's first denial decision. This deficiency led to the dismissal of the motion. Now, on appeal, counsel has added language disputing that first decision, but the only reference to the dismissal of the motion is a new sentence in the "Procedural Facts" section, acknowledging that the director "denied [the motion to reconsider] on September 3, 2011."

Counsel, on appeal, does not discuss or rebut the director's finding that the petitioner's previous filing did not meet the requirements of a motion to reconsider. The petitioner does not demonstrate, or even attempt to explain, that the director should have accepted the February 2011 filing as a motion to reconsider. The petitioner simply filed an appeal of the initial decision, as though the intervening motion (and the director's dismissal thereof) had never happened.

Issues not briefed on appeal by a pro se litigant are deemed abandoned. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (per curiam). When an appellant fails to offer argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Atty. Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005). In this instance, the petitioner, on appeal, does not contest or address the director's finding that the February 2011 filing failed to meet the requirements of a motion. The petitioner has, therefore, effectively abandoned that issue.

The petitioner, on appeal, does not address or contest the sole stated ground for the director's most recent decision (the failure of the petitioner's motion to meet the requirements of a motion to reconsider). The petitioner's appeal does not establish, or attempt to establish, that the director's most recent decision was in error. Therefore, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.